

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

O.A.NO.1122/1998

This the day of 5th March, 2003

HON'BLE SHRI GOVINDAN S.TAMPI, MEMBER (A)
HON'BLE SHRI K.V.SACHIDANANDAN, MEMBER (J)

Ramesh Madhav Joshi,
Executive Engineer (Civil),
Telecom Civil Division,
PUNE.

...Applicant

(By Advocate: Shri S.P.Saxena)

Versus

1. The Union of India
Through The Secretary,
Department of Telecommunication,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi.
2. The Director General,
Department of Telecommunications,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi - 110 001.
3. The Director,
Department of Telecommunications,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi - 110 001.
4. The Suptg. Engineer (Civil),
T.C.C., Pune.
5. Shri P.V.Mohan Executive Engineer,
Telecommunication Department,
Madras. ...Respondents.

(By Advocate: Shri Vinay S. Masurkar)

ORDER (ORAL)

Shri Govindan S.Tampi :-

Applicant has directed his challenge at respondents' letter dated 11.12.1997, wherein his request for seniority and promotion, vis-a-vis, respondent No.5, has been rejected.

2. S/Shri S.P.Saxena and Vinay S. Masurkar appeared for the applicant and the respondents. *respectively.*

(2)

3. Shri R.M.Joshi, holder of Diploma in Civil Engineering joined as Building Overseer in P & T Department on 19.8.1963 and was granted quasi permanency on 01.03.1966. Building Overseer and Jr. Engineers redesignated as Sectional Officers were similar in functions and responsibilities. P.V.Mohan, respondent No.5 joined as Section Officer, later than the applicant. The applicant opted for absorption in the Civil Wing on 26.6.1973 and in 1975 both the posts became part of the single cadre of Jr. Engineer. However, promotions were being ordered as Assistant Engineer, as ad hoc basis, ~~and~~ In the combined list of BOs/JE dated 01.04.1977, he was at Sl. No.82 and the respondent No.5 at Sl No.86. In the absence of Recruitment Rules, promotions were being ordered to the grade of Asstt. Engineers 50% by direct recruitment 25% by promotion of Graduate J.Es with degree with five years' service and 25% by promotion of non-graduate JEs with eight years' service. The applicant became Asstt. Engineer on 28.1.1977 on ad hoc basis and on 20.3.1978 on regular basis, while respondent No 5 was given the same benefit early. Hence his OA ² ₂

4. Grounds raised in this OA are that:

- i) the applicant has joined the similar post much earlier than P.V.Mohan;
- ii) BOs and JEs were similar if not identical;
- iii) BOs and JEs had the same scale of pay;
- iv) applicant having become eligible for promotion as Assistant Engineer in 1971, should have been promoted ^{much 2} ahead of P.V.Mohan;

(3)

- v) seniority list had been revised in terms of the Tribunal's order;
- vi) Bangalore Bench had placed BOs above JEs and he should have got the benefit thereof;
- vii) his deemed date of promotion should have been 4.8.1972, if not August, 1971; and
- viii) he had not been given the benefit of the Tribunal's order.

All the above points were forcefully reiterated by Shri S.P. Saxena, learned counsel for the applicant.

5. Respondents' contest the pleadings of the applicant. It is pointed out that in P&T Civil Wing, created in 1963 JEs formed the lower rank and the vacancies in the next grade of AEs were filled up by both promotions and direct recruitment. Recruitment Rules, formulated in 1976, provided that 50% would be from Engineering Service Examination and 50% from JEs with eight years of service. Besides, there was the cadre of Building Overseers eligible for promotion as AE (Building), which was declared as a dying cadre in 1973, and those who opted to come over were merged in the JE cadre in 1975-76. A combined seniority list was accordingly prepared for JEs/Sectional Officers and BOs. The applicant, who opted for merger in 1973, was absorbed in JE cadre in 1975-76 and was promoted as AE (Civil) on ad hoc basis on 28.1.1977 and was thereafter regularised on 20.3.1978.

12

(4)

The first combined seniority list was issued in 1987, which was challenged in a number of OAs in different Benches of the Tribunal. As a result of the decisions in a few cases, seniority of 19 AEs were got refixed, giving them the benefit of ad hoc service as well. Thereafter, Bangalore Bench of the Tribunal on 20.12.1991 disposed of OA-1108/99, granting the benefits of ad hoc service to the applicants but directing that the benefit should be given to all similarly placed individuals across the country. Implementation of the order took sometime and in the meanwhile promotions were made from the earlier list. Revised seniority list taking into account continuous officiation was issued on 9.2.1993 wherein the applicant was placed at Sl.No.185. This was ^{also} the position in the revised/final seniority list of 20.6.1994 issued in accordance with Principal Bench's directions issued following Bangalore Bench findings and following Ministry of Home Affairs OM No.9/11/55.RPS dated 22.12.1959. The applicants' case has thus been duly taken care of. Earlier there was a distinct quota earmarked for Sectional Officers/JEs and Building Overseers for promotion to the grade of AEs and promotions were accordingly ordered. None junior to him as BO was promoted ahead of him. Respondent No.5 - P.V. Mohan² was promoted in 1972, against the quota meant for Sectional Officers and his position was not comparable to that of the applicant, who was promoted in 1977. The applicant, therefore, cannot claim seniority over Mohan¹. Mohan²'s promotion as AE had taken place in 1972, three years before the cadres of BOs and JEs were merged and the benefit granted to Mohan¹ on the basis of the said

(5)

promotion cannot be gainsaid. Mohan⁶ was accordingly promoted as AE in June, 1994 and the applicant in November, 1994. Applicant's plea that certain other BOs had been granted ad hoc promotion earlier also does not come to his help, as they were all his seniors. Further, the Hon'ble Supreme Court has held in Union of India & Ors. Vs. R. Swaminathan (Civil Appeal No.8058/96) that junior drawing more pay than the senior as a result of ad hoc promotion was not an anomaly under FR 22 (1) (A) (1). Applicant's plea for stepping up of pay, vis-a-vis, Mohan also cannot be accepted. Respondents' further point out that as the applicant has been given deemed date of regular ^{promotion} as 20.6.1974, he cannot have any further grievance to be redressed. The applicant has been treated fairly and properly and had been given all the benefits. What he is asking is something extra and it cannot be granted states Shri Masurkar, learned counsel for the respondents.

6. We have carefully considered the matter. The applicant is aggrieved by the impugned order No.19.42/92 -CWG dated 11.12.1997, whereunder his request for promotion and seniority, vis-a-vis, P.V. Mohan has been rejected. The applicant, who was originally appointed as Building Overseer in P&T (Civil Wing) and who came to be absorbed in the JE cadre, has claimed that respondent No.3 was junior to him, having been selected in the lower grade on a later date than himself and should, therefore, ^{he should} have been given the benefit ahead of ^{Mohanam} ~~him~~ in the cadre of AE (Civil). The respondents contested the above. On examination of facts, we are convinced that the applicant

(6)

does not strictly have a case in law. While it is true that he had joined as Building Overseer in August, 1963 and respondent No.5 on a slightly later date, the fact remains that both of them came to the same grade only after merger of the two cadres in 1975. In between the cadre of Building Overseer, to which the applicant belongs, has been declared as a dying cadre and those belonging to the same cadre had been given an option to come over to the grade of JE/Sectional Officer. Only after the merger, the combined seniority came to be maintained for both the cadres for promotion to the post of AE (Civil). Before the merger, the applicant was entitled for promotion to the grade of AE (Building) while respondent No.5 was eligible for a promotion to the cadre of AE (Civil). It is also seen that respondent No.5 was promoted as AE in 1972, while the said promotion came to the applicant only in 1977. Before the merger, when the promotions were being made to the grade of AE, earmarked vacancies were kept for those coming from Building Overseer cadre and those from JE/Sectional Officers cadre. Respondent No.5 came to be promoted against the quota meant for the JE/Sectional Officer in 1972, in which year the applicant, who is coming from the stream of Building Overseer, was not considered for such promotion. That being the case, at the time of promotion as AE, respondent No.5 had got the priority over the applicant. This was absolutely ~~illegal~~^{legal} and ~~incorrect~~^{correct}. The decision of the Bangalore Bench of the Tribunal, which was adopted by the Principal Bench also, wherein all the persons were granted the benefit of ad hoc service for purpose of counting their regular services,

(7)


had been duly extended to the applicant as well, and his deemed seniority as AE was fixed w.e.f. 20.6.1974, though his regular promotion had come only on 20.3.1978. This, however, does not give him any seniority over respondent No.5, who had come from a different stream before the merger of the two cadres and who has been promoted, though on ad hoc basis in 1972, i.e., on a date much earlier than that of the applicant. ^{The applicant} cannot, therefore, claim any seniority over respondent No.5. The applicant's plea is that once he had completed eight years of service, he should have been considered and promoted as JE in 1971. The same does not stand to reason, as completion of the requisite period only grants an individual eligibility for consideration and does not make him automatically entitled for promotion, as the applicant would like us to believe. Even in the revised seniority list issued after the adoption of the decision of the Bangalore Bench of the Tribunal by the respondents, respondent No.5 is senior to the applicant and applicant cannot expect the Tribunal to overlook the same. In view of the above, it is evident that the applicant's case for promotion and seniority, vis-a-vis, respondent No.5 cannot be entertained at all. It is also on record that Hon'ble Supreme Court has in the case of R. Swaminathan (supra) held that a senior person cannot be granted the benefit of stepping up of pay, ^{vis-a-vis} ~~vis-a-vis~~ a junior, if the latter had been drawing higher pay on ad hoc basis. ^{in the lower post}

7. In the above view of the matter, we are convinced that the applicant does not have a case for our

(8)

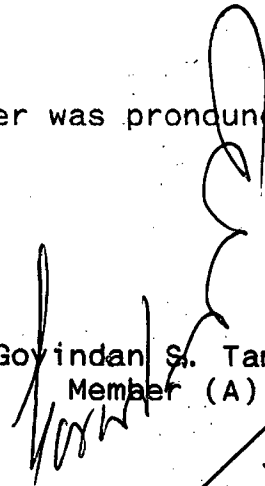
interference. OA, therefore, fails and is accordingly dismissed. No costs.

8. The operative portion of this order was pronounced in the court.



(K.V. Sachidanandan)
Member (J)

/sunil/



(Govindan S. Tampi)
Member (A)